

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§
	§
Plaintiff/Respondent,	§
	§
V.	§ CR. No. C-10-265
	§ C.A. No. C-11-48
MARISSA PORRAS,	§
	§
Defendant/Movant.	§

**ORDER FOR RESPONDENT TO ANSWER  
AND ORDER ALLOWING MOVANT TO REPLY**

On February 18, 2010, the Clerk received Movant Marissa Porras' (Porras) motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court has reviewed the motion and concludes that summary dismissal pursuant to Rule 4(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2010) ("2255 RULES") is inappropriate. Accordingly, it is ORDERED that the United States answer the § 2255 motion not later than sixty days after the entry of this Order.

As part of its answer, the government should address the effect of Porras' waiver of her right to file a § 2255 motion, which was contained in her written plea agreement. (D.E. 27). In particular, the government shall address: (1) whether the record supports the conclusion that the waiver was knowing and voluntary; (2) whether the waiver is enforceable; and (3) whether the waiver precludes Porras from bringing all of the grounds in her motion. See generally United States v. White, 307 F.3d 336, 343-44 (5th Cir. 2002) (an ineffective assistance claim survives a waiver of § 2255 rights "only when the claimed

assistance directly affected the validity of that waiver or the plea itself"); United States v. Wilkes, 20 F.3d 651 (5th Cir. 1994) (enforcing defendant's voluntary and knowing waiver of § 2255 rights).

If there are claims in her motion that are not barred by the waiver, the United States' response shall address those claims on their merits.

It is further ORDERED that the United States file with the Clerk, at or before the time of its answer, transcripts of all pertinent proceedings that are not already part of the record. Relevant affidavits, if any, are also to be filed with the answer.

Pursuant to Rule 5(d) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2008), Porras may file a reply not later than thirty days after service of the government's answer.

It is so ORDERED this 3 day of March, 2011.



HAYDEN HEAD  
SENIOR U.S. DISTRICT JUDGE